

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEFFREY PADOVANO, THOMAS	)	
WERNDLE, CHRIS ARBER, MICHAEL	)	
TUTTLE and ANDREW MITRANO, on	)	
behalf of themselves and others similarly	)	
situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 15-1193
	)	
FEDEX GROUND PACKAGE SYSTEM,	)	Judge Nora Barry Fischer
INC.,	)	
Defendant.	)	

**ORDER OF COURT**

AND NOW, this 25<sup>th</sup> day of November, 2015, upon consideration of Plaintiffs’ First Amended Complaint – Class Action, (Docket No. [10]), wherein five New York-based Plaintiffs allege that subject matter jurisdiction over their Rule 23 class action claims “is proper under 28 U.S.C. § 1331,” i.e., federal question jurisdiction, but have set forth only state law causes of action brought on behalf of a class of “New York Drivers” performing pick-up and delivery services for Fedex Ground Package System, Inc., within the State of New York, alleging violations of New York Labor Law, N.Y. Lab. Law §§ 160, et seq., and common law theories of unjust enrichment, and have set forth no alternative basis for this Court to exercise subject matter jurisdiction over this class action, *see e.g., Judon v. Travelers Property Cas. Co. of America*, 773 F.3d 495, 500 (3d Cir. 2014) (citation omitted) (“CAFA confers on district courts ‘original jurisdiction of any civil action’ in

which three requirements are met: (1) an amount in controversy that exceeds \$5,000,000, as aggregated across all individual claims; (2) minimally diverse parties; and (3) that the class consist of at least 100 or more members”),

IT IS HEREBY ORDERED that pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, Plaintiffs’ Amended Complaint [10] is DISMISSED, without prejudice, for lack of subject matter jurisdiction. *See e.g., Zambelli Fireworks Mfg. Co., Inc. v. Wood*, 592 F.3d 412 (3d Cir. 2010) (“[f]ederal courts are courts of limited jurisdiction.”); *McCracken v. ConocoPhillips Co.*, 335 F.App’x. 161, 162-163 (3d Cir. 2009) (citing *Packard v. Provident Nat’l Bank*, 994 F.2d 1039, 1045 (3d Cir. 1993)) (“[t]he burden is on the plaintiff to establish the existence of federal jurisdiction.”);

IT IS FURTHER ORDERED that Defendant’s Motion to Dismiss [12] is DENIED, as moot; and,

FINALLY, IT IS ORDERED that the Clerk of Court is direct to mark this case CLOSED.

s/Nora Barry Fischer  
Nora Barry Fischer  
United States District Judge

cc/ecf: All counsel of record.